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File No. O. Khoti/42

Legal **DEPARTMENT**

A. **BRANCH**

p. 15 (E)

Subject:—

Opinions under

The Khoti Settlement Act 1880.

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Str. Sectt. Slip 24 B e.

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L.C.I Department File No. Khoti 1942

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Statement of the Case.

The questions referred to the R.L.A. for consideration are:-

(i) Whether flat bigha measurement charges in respect of the Khoti Mishat Pad or waste lands should be recovered from annual Kabulayatdar Khots in the district of Kolaba or whether they should be written off.

(ii) whether recovery of such charges from the Khots would amount to a recognition of the Khot's occupancy and proprietory rights to the detriment of the rights of Government.

2. Under section 135 G(b) of the Land Revenue Code, 1879 pot bigha measurement charges are recoverable as a revenue demand. They are therefore recoverable under Chapter XI of the Land Revenue Code, as provided by section 167 of the Code. In the case of unalienated land the occupant, and in the case of alienated land the superior holder is primarily liable to Government for the payment of the revenue including all arrears (see section 136(1) in Chapter XI of the Code). The question therefore depends on the status of the Khot in relation to Khoti Mishat waste lands.

3. The Khoti tenure in the district of Kolaba is a customary tenure dating back to at least the 18th Century, its incidents as prescribed by custom being nowhere defined, and in fact differing in different villages. The origin of the tenure however was probably due to

The difficulty

experienced by Government in collecting the revenues of the villages in the Konkan as a result of which agreements were entered into with certain persons (Khots) for the collection of revenue, the agreement being in each case in accordance with the custom of the country. Later, to provide for the due administration of the villages and to protect tenants from the exactions of the Khots it was found necessary to amplify these agreements which at first had merely stated that the Khot concerned was responsible for the Government assessment. After 1865 in cases where no lease was granted under section 37 of the Bombay Act I of 1865 the annual kabulyat signed by the Khot the provisions of which had to conform to the custom except as altered by section 38 of that Act defined exactly the demands which the Khot could make against his tenants.

4. A Khot's interest in his village is limited, not absolute. He possesses in some measure a propriteor right. He is an occupant with all the rights and liabilities affecting such a status. He has to secure to Government the payment of the village revenue, while the village lands which he has to manage in accordance with the restrictions mentioned in the Kabulayat fall into three distinct classes. These are (1) Dharekari lands the tenants of which have a transferable and heritable right paying Dhara alone to the Khot: (2) Khot nisbat lands which are either

in the hands of permanent occupancy tenants or tenants with lease permanent right paying rents to the Khot and the Government assessment; and (3) Khotkhangi lands, private lands in the possession of the Khot of which he can make such use as he pleases (See Gangaat Gopal vs. Secretary of State 45 Bom. 599).

5. The liabilities of the Khot are that he is responsible for the revenue of the village and is required to manage the village by entering into the customary annual Kabulayat. If he fails to manage the village, it will be kept under attachment and Government will assume the management of the village in which case the Khot will be liable to pay rent for the rankhara lands in his possession. When he fails to sign the customary Kabulayat he ceases to be technically the Khot of the village and will be deprived of all the rights and privileges till it is restored to him. As a remuneration for the liability undertaken by the Khot to secure the Government revenue of the whole village he is entitled with certain rights and privileges. This question has been exhaustively dealt with in the case of Tejabai vs. Dy. Collector of Kolaba (1866) 3 Bom. H.C.R. 123 which is one of the earliest decisions on the Khoti matters. The first right, the Khot enjoys, is to recover Rents from his Khot-shut lands. His second

under cultivation the

uncultivated lands in the village.

His third right is one of reversion which is recognised by section 38 of Act I of 1865. In the case of any transfers by the Khoti tenants without the permission of the Khot,, he has a right of re-entry in the absence of any custom to the contrary. This right is also available to him in the case of the magayat paragandha tenants i.e. in the case of any khoti tenant dying without any heirs and in the case of any tenant abandoning his holding (These lands are known as khoti nisbat padit lands). These in short are some of the valuable rights of a Khot and all these rights are dependent on the right to manage the village. If the Khot throws off the management of the village all his rights and privileges come to an end until the managment of the village is restored to him (see judgment in ~~His~~ High Court Appeal). No 82 of 1933 from the original Decree with first Appeal No. 100 of, 1934)

6. It is clear from the incidents of the Khoti tenture as judicially recognised that the managing Khot i.e. the Khot who has passed the customary annual Kabulayat has the right to hold and to manage the khot nisbat padit lands either by leasing them out to tenants or by himself cultivating them In the former case he would be entitled to revoer the assessment and Fayda from

the tenants, while in the latter case he would be liable to bear the assessment and pay the proportionate share of Rayda to the share Khots if any. But if the Khot throws off the management of the village, Government would be entitled to recover the assessment and Rayda from the persons in possession of these lands and to let them out if unoccupied. Consequently on the extinction of the Khotki such lands revert to Government (see M.L.A's opinion No. 110, dated 11.1.1927). Government has therefore the ultimate reversionary interest in these lands (see the judgment in the Thana First Class Civil suit No. 120 of 1934) The legal position in respect of these lands would therefore be that so long as the Khot passes the annual customary Kabulayat he will be entitled to manage them; but whenever he declines to pass such Kabulayat Government would be entitled to manage them till the village is restored to the Khot on his executing such Kabulayat and if at any time the Khotki becomes extinct, these lands would revert to Government. In other words, the Khot has an interest in the lands and holds them during the tenure of his Khotki, but the tenure is subject t termination and res. toration in certain contingencies. In the light of this and other incidents of the tenure it is to be considered whether the Khot is the occupant or superior holder of these lands

The true question underlying the points raised is whether the recovery of the Pot hissa measurement charges in respect of the Khoti Hissat Pad lands from annual Kabulyatdar Khots in the District of Kolaba would amount to a recognition of occupancy and proprietary rights in them in respect of these lands higher than those which they are in law entitled to.

2. The existing rights of the Khot in regard to these lands are now well defined by decisions of the High Court and other Courts. See 3 Bom. H.C.R. 132 at pp 148.149, 151,153 and 154; and 48 Bom 509 at pp 611-612 As pointed out in the first mentioned case, the right to cultiv to waste or otherlands as may be at the Khot's disposal or to give them out in cultivation under such terms as may be most to his advantage is to be viewed as a recognised mode of his remuneration for the services rendered by him as a farmer of revenue. The Khot has a limited interest in the village and has a proprietary right in some measure. He can also be said to be an occupant with all the rights and liabilities affecting such a status. However, all these rights are governed by and depend upon the subsistence of the Khoti. On his being and limited to exetute the Kabulyat and thus ceasing to be a Khot his limited interest and proprietary rights, whatsoever, their nature come to an end. Therefore, though he is an occupant, his rights as an occupant fall short of the full rights of an occupant under the Land Revenue Code (Bombay Act V of 1879)

3. Sub section 3(16) and (17) of the Code define an "Occupant" and an "occupancy". Section 73 of the Code provides that an occupancy shall, subject as therein mentioned, and save as otherwise prescribed by law, be deemed a heritable and transferable property.

4. If, treating these Khots as occupants within the meaning of the Code in reference to these lands, Government recover these charges from them, it can well be contended by them that the Government have recognised them as having the rights of occupancy in

7. "Alienated" as defined in section 3(20) of the land Revenue Code means transferred in so far as the rights of the Provincial Government to payment of the rent or land revenue are concerned wholly or partially to onwership of any person. In the case of a Khoti village there is no alienation wholly or partially of the rights of Government to the payment of the rent or land revenue. Consequently a Khot is not a superior holder of an alienated land within the meaning of section 136(1) of the Land Revenue Code.

8. The next question is whether he is an occupant" as defined in section 3(16) means a holder in actual possession of unalienated land other than a tenant: provided that where the holder in actual possession is a tenant, the land-lord or superior land-lord as the case may be, shall be deemed to be occupant. The term "tenant" as defined in section 3(14) means a lessee, "but does not includ a lessee holding directly under the Crown". It is plain that the Khot holds the lands within the meaning of the definition in section 3(11), and also that he holds directly under the Crown: The Khot is therefore not a 'tenant' but an 'occupant' within the meaning of the Code. The definitios in sections 3(14) and 3(16), as amended in 1923, are clearly directed to fix the revenue

liabilities under the Code and not to define the extent of rights or tenurial incidents of a holding. In the view, the Khot's status being that of an occupant vis-a-vis the Khoti mlebat Pad Lands, Pot hissa measurement charges are recoverable from him as from An occupant. This exclusion would not clothe the Khot with any higher rights than he possesses under the terms and tenurial incidents of Khotki in respect of such lands; nor would it estop Government from challenging any assertion by the Khot of such higher rights against Government's rights of reversion etc. (The position in fact appears comparable to that of a lessee for a term of years holding under Government but on condition that the tenure of the lease could be terminated by Government in certain events; such a lessee is 'occupant' and liable for survey measurement charges).

9. The question are very important but as they are not free from doubt the Advocate General is requested to give his opinion in the matter.

Sd/-
P.U.H.
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Remembrancer of Legal Affairs.

U.R. to Adv. Genl. No 4764 dated 10-6-42

Mr/1/5

in reference to these lands as defined by the Code and larger than what they actually possess under the decision above mentoned.

5. It has been suggested in the correspondence that when revovering these charges from them, appropriate entries may be made in the Record of Rights which would make it clear that no higher rights than those now enjoyed by them in reference to these lands were being recognised. I do not know whether this suggestion can be given effect to But even if it is, the very fact of the recovery from them of charges which are recoverable under the Code from persons having full occupancy rights would enable them to contend, in a certain measure, that full occupancy rights in them have been recognised and accepted by the Government.

6. The choice, therefore, would seem to be between foregoing these charges and recovering them with the probability of enavlibg the Khots to raise the contention I have mentioned.

7. It has been suggested in the correspondence that the reversionary rights of Government in respect of these lands are, having regard to the usage which enables the Khots or their decendants to claim their Khoti rights against Government even after they have lapsed, of little real value and that in foregoing these charges the Government would be trying to preserve a shadow while giving up the substance. Primafacie, I would regard any action which may have the effect of enlarging the rights of the Khot as against the Government detrimental to Government. I do not know the value in practice of the reversionary right to these lands to Government and whether the exercise of it, if and when the occasion arises, results in any substantial increment to the revenue

Sd/- M.C. Setalvad
Advocate General
7/8/42

Mr/1/5

Office of the R.L.A.

The Advocate General was consulted and a copy of his opinion dated the 7th August 1942 together with a copy of the statement of the case is forwarded herewith.

Sd/-

P.M.M.
11-8-42

Remembrancer of Legal Affairs.

U.R. to R.D. No 6532 dated the 12th August 1942

Ur/1/5

Submitted.

2. The R.L.A. is requested to advise whether there is any objection to accept this year the annual kabulayats under protest from the Kolaba Khots.

3. 36 suits have been filed in the court of the P.C. Sub-Judge, Thana, by certain khots in the Kolaba District for a declaration that they are not bound to execute kabulayats in the form settled by G.R., R.D. No 3271 dated the 20/2/39 and for damages on account of their being compelled to execute kabulayats for 1939-40 in that form. 21 more suits have been filed for a similar relief by some Karar-mana khots in the Kolaba District. Some of these suits were filed in ~~1939~~ 1940 and some in 1941. Even when these suits were pending, R.L.A. advised in 1940 and 1941 (see his u.o.r. to R.D. No 11052 dated the 16th December 1940 and No 10008 dated the 17th December 1941) that there was no legal objections to accepting the kabulayats under protest for those years as such action would not prejudice the position of Government. There is therefore no legal objection this year also to accepting the kabulayats from the Kolaba khots under protest as the suits are not disposed of. It may however be pointed out that 1939-40, the khots passed kabulayats under protest

and in the suits filed subsequently, they have claimed damages for their being compelled to execute the kabulayats. However, there is no objection to accepting the kabulayats under protest this year also as it will not prejudice the defence of Govt. in the said suits. The papers may be "seen and returned."

U.R. to R.D.I, No. 8804 dated 29th October 1942

Mr/1/5

Submitted

2. Please see N.L.A's U.O. to N.D. No. 6532, dated the 12th Aug. 1942. The N.D. has decided not to take any action regarding the arrears of pot hissa measurement charges due from the non-occupi annual kabulayatdar khots for the present and to consider the question after the suits filed by the Kolaba Khots are decided The N.D. has however proposed to inform the Govt. ~~has however proposed to inform the Govt.~~ that Govt. agrees with him that the Khot is the occupant of the Khoti nisbat bad lands when he is a occupi khot or a non-occupi settlement leasehold khot and that pot-hissa measurement arrears due from the non-occupi leasehold khots in the Kolaba District should be recovered from the khot concerned. The N.L.A. is requested to confirm the legality of this proposal as regards non-occupi leasehold khots.

3. The question for consideration ~~/////~~ is whether the non-occupi leasehold khots in the Kolaba Dist. are occupants of the Khot-nisbat bad lands and whether arrears of pot hissa measurement charges can be recovered from them.

4. It is presumed that what N.D. means by the term "non-occupi leasehold khots" is "occupi or settlement leasehold khots ---- ----ted under sec. 37 of Act I of 1865.

Bom Act I of 1865 was wholly repleaed by the Bom L.R. Code, 1879 excepting secs. 37 and 38. An 'occupant' was defind in that Act as a person whose name was entered authorisedly in the survey papers, or other public accounts, as responsible to Govt. for payment of assement due upon any field or recognised share of a field (see 2(j) of Act I of 1865). If secs. 37 and 36 of this Act are read together It is quite apparent that these leasehold khots are occupants. Before however expressing a definite opinion, perhaps a copy of the form in which such leases or sanads are usually granted may be obtained from R.D.

Sd/-
S.R.P

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